

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**L.S., Appellant**

**and**

**SOCIAL SECURITY ADMINISTRATION,  
PERSONNEL OPERATIONS, Jamaica, NY,  
Employer**

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**Docket No. 13-847  
Issued: July 23, 2013**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On February 26, 2013 appellant, through her attorney, filed a timely appeal from a November 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP properly terminated appellant's compensation for wage-loss and medical benefits effective September 26, 2011.

**FACTUAL HISTORY**

On November 6, 2008 appellant, then a 43-year-old benefits authorizer, sustained injury when she fell backward over a cabinet drawer. OWCP accepted the claim for back and buttock

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

contusions and a lumbosacral sprain. On March 17, 2010 the employing establishment offered appellant a light-duty position at six hours a day. Appellant returned to work in the light-duty position as of May 17, 2010.

On October 8, 2010 appellant filed a claim for a recurrence of disability commencing September 24, 2010. The date of the original injury was reported as November 6, 2008. Appellant stated that on September 24, 2010 she bent over to retrieve a pen under her desk and felt a sharp pain in her back and buttocks.

OWCP developed the claim as a claim for a new injury. On October 25, 2010 it accepted the claim for thoracic or lumbosacral neuritis or radiculitis. Appellant received compensation for total disability.<sup>2</sup> An attending physician, Dr. Rajpaul Singh, a Board-certified neurologist, stated in a December 21, 2010 report that appellant remained totally disabled.

Appellant was referred to Dr. Leo Varriale, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated March 2, 2011, Dr. Varriale provided results on examination and diagnosed aggravation of lumbosacral strain and right shoulder of the lumbar spine. He found that appellant had not recovered from her injury and disability was expected to last two more months.

In a report dated April 15, 2011, Dr. Singh provided results on examination and diagnosed low back syndrome and L3-4 central disc herniation.<sup>3</sup> He stated that appellant was totally disabled.

OWCP referred appellant for a second opinion examination by Dr. Arnold Illman, a Board-certified orthopedic surgeon. In a report dated May 3, 2011, Dr. Illman reviewed a history of injury and provided results on examination. He stated, "I did not find any objective evidence of disability to the neck or back, but her complaints were related to the injury of September 24, 2010, but please note there was a prior injury to her lower back a few months before which had not completely resolved. Appellant's diagnostic findings were essentially normal in that the disc noted at L3-4 would not cause back pain and she had no herniated discs in the cervical spine. In addition to that, she had normal electromyogram of both upper and lower extremities." Dr. Illman determined that appellant had "fully recovered from the effects of the injury on the job and [I] do not find any medical findings which reflect any abnormalities. I found no residuals. I feel that these conditions have resolved."

By letter dated June 8, 2011, OWCP advised appellant that it proposed to terminate her compensation for wage-loss and medical benefits. It found that Dr. Illman represented the weight of the medical evidence. Appellant was notified that she should provide additional evidence or argument within 30 days.

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<sup>2</sup> The compensation payment information in the record indicated that appellant was paid compensation for two hours a day from the November 6, 2008 claim and six hours a day for the September 24, 2010 claim.

<sup>3</sup> The record contains a January 22, 2009 magnetic resonance imaging (MRI) scan report diagnosing an L3-4 central disc herniation.

On July 7, 2011 appellant additional medical evidence. In a report dated July 6, 2011, Dr. Singh provided results on examination and diagnosed low back syndrome and L3-4 disc herniation. He reported appellant's disability level was total. Appellant also submitted a June 23, 2011 lumbar MRI scan report, diagnosing L3-4 disc herniation with thecal sac impression, left subligamentous disc herniation abutting the left S1 nerve root, L4-5 disc bulging, hypertrophy of L2-3 and L3-4 facets, left lumbar convexity and straightening of the lumbar lordosis.

In a report dated July 6, 2011, Dr. Neil Watnik, an orthopedic surgeon, provided a history that appellant had a work-related injury to her low back in 2008. He provided results on examination and diagnosed lumbar radiculopathy. In a separate report dated July 6, 2011, Dr. Watnik stated that appellant had been under his care for lumbar spine and herniated disc arthritis conditions and she was advised not to return to work. By report dated August 19, 2011, Dr. Singh provided results on examination and noted MRI scan results.

By decision dated September 26, 2011, OWCP terminated appellant's compensation for wage-loss and medical benefits. It found that Dr. Illman represented the weight of the medical evidence.

On October 18, 2011 appellant requested reconsideration. She submitted a September 8, 2011 report from Dr. Singh, who advised that her prognosis was guarded. Dr. Singh stated, "superimposed upon the natural aging and degenerative process in the patient's spine, this injury may result in a permanent reduction in the normal range of motion of the lumbosacral spine and local and peripheral neuromuscular system resulting in chronic pain and compromised performance of ordinary functions." In a report dated November 18, 2011, he provided results on examination and stated that appellant was working and her disability level was "mild partial."

By decision dated January 12, 2012, OWCP reviewed the case on its merits and denied modification.

On February 8, 2012 appellant again requested reconsideration. She submitted a January 25, 2012 report from Dr. Singh stating that she was currently working six hours a day within restrictions. Dr. Singh advised that appellant could not work full time.

In a decision dated May 8, 2012, OWCP reviewed the case on its merits and denied modification.

By letter dated July 2, 2012, appellant, through her representative, again requested reconsideration. In a report dated June 20, 2012, Dr. Singh provided a history and diagnosed left L3-4 radiculopathy and L3-4 disc herniation. He opined that appellant's symptoms and physical findings were causally related to the work injuries. Dr. Singh stated that based on a review of physical findings and diagnostic studies, she had "suffered a worsening injury to her lumbar spine as is evidenced by two standard tests. In the parlance of any neurologist or orthopedic surgeon, this should constitute plausible evidence (based on imaging and neurophysiological testing) to explain the worsening low back pain, its intensity, recurrence and persistence and hence [appellant's] inability to work based on her job descriptions." According to Dr. Singh, "to ask for an explanation as to 'why' I believe that the claimant was totally disabled during the time

of treatment, in the setting of an L3-4 disc herniation and clear radicular signs, electrophysiologically is simply ludicrous.” He indicated that his disagreement with Dr. Illman and further stated, “I conclude that the work[-]related injury to [appellant’s] low back has caused her to experience low back pain which at the present time is a chronic problem. [Appellant] may need symptomatic treatment from time to time to alleviate periods of reexacerbation of her symptoms. Due to periods of exacerbation, Ms. Sanders may experience restrictions in her physical activities, *i.e.* sitting or standing for shorter periods of time, limited pushing/pulling or lifting of objects greater than 30 pounds, *etc.*”

By decision dated November 27, 2012, OWCP reviewed the case on its merits and denied modification. It found that Dr. Illman represented the weight of the medical evidence.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>4</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>5</sup>

The Board has noted that in assessing medical evidence the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician’s knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>6</sup>

### **ANALYSIS**

In the present case, OWCP accepted that on November 6, 2008 appellant fell in the performance of duty and sustained back and buttock contusions and a lumbosacral sprain. The record indicates that appellant returned to a part-time, light-duty position at six hours a day. Appellant received compensation based on her inability to work two hours a day. On September 24, 2010 she bent over at her desk. This claim was accepted for thoracic or lumbosacral neuritis or radiculitis. Appellant received compensation for temporary total disability. With respect to a termination of wage-loss compensation OWCP has the burden of proof.

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<sup>4</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>5</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>6</sup> *Gary R. Sieber*, 46 ECAB 215 (1994).

Appellant's compensation for wage-loss and medical benefits was terminated effective September 26, 2011. The Board finds a conflict of medical opinion between Dr. Singh and Dr. Illman, who found that the employment-related conditions had resolved as of his examination on May 3, 2011. Dr. Singh noted an L3-4 disc but stated that this would not cause back pain. His reports stated that appellant was totally disabled as confirmed by diagnostic testing. Dr. Singh found a worsening of her lumbar spine condition for which she remained totally disabled. He disagreed with the opinion of Dr. Illman, noted the presence of an L3-4 disc herniation as well as a L3-4 radiculopathy and provided an unequivocal opinion that the conditions were employment related and appellant had remained disabled. According to 5 U.S.C. § 8123(a), when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.<sup>7</sup>

In view of the disagreement between Dr. Singh and Dr. Illman, OWCP did not meet its burden of proof. The case necessitates referral to an impartial medical specialist. The referee should provide a rationalized opinion with respect to: whether there are additional conditions that should be accepted as causally related to the employment injuries; whether appellant had any continuing employment-related conditions after September 26, 2011, and if so, the nature and extent of any continuing disability. The issue of disability involves both the date-of-injury position on November 6, 2008, as well as the six hour a day light-duty position as of September 24, 2010. After such further development as OWCP deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that OWCP did not meet its burden of proof to terminate compensation effective September 26, 2011.

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<sup>7</sup> *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 27, 2012 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 23, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board